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CLERK

1148

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1980
No. _____

WILLIAM CHAPIN BURNS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, in a prosecution for failure to file tax returns (26 U.S.C. Sec. 7203), a misdemeanor requiring proof of a "willful" state of mind, where the defendant claims that he relied on what purported to be legal advice from others that his conduct was proper, direct evidence of the advice he received should have been admitted as evidence of the defendant's state of mind. The offered (but excluded) evidence was the slide show and commentary that the defendant saw and heard several times, and testified that he relied upon in acting as he did.

2. Whether, in a prosecution for failure to file tax returns (26 U.S.C. Sec. 7203), a misdemeanor requiring proof of a "willful" state of mind, the jury should be instructed that conduct is not "willful" if the failure to file is due to a "reckless disregard for the requirements of the law," or to "gross negligence."

3. Whether it is a defense to charges of failing to file tax returns (26 U.S.C. Sec. 7203) that the defendant believed that he did not receive taxable income because he received only federal reserve notes, and not "dollars" of gold or silver, or their legal equivalent.

INTERESTED PARTIES

There are no parties to this proceeding other than those listed in the caption.

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1980

No. _____

WILLIAM CHAPIN BURNS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

OPINIONS BELOW

The opinion of the court below, affirming petitioner's conviction, is unreported and is reproduced at Appendix A. The denial of the petition for rehearing is unreported, and is reproduced at Appendix B.

JURISDICTION

The opinion of the court below, affirming petitioner's conviction, Appendix A, was entered on December 1, 1980. A timely petition for rehearing, filed by new counsel, was denied on January 22, 1981, Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES AND FEDERAL RULES

U.S. CONSTITUTION, FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor shall private property be taken for public use, without just compensation.

U.S. CONSTITUTION, SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

26 U.S.C.

§ 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

FEDERAL RULES OF EVIDENCE

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

PETITION

WILLIAM CHAPIN BURNS, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled action on December 1, 1980, a timely petition for rehearing having been denied on January 22, 1981. (There are no parties to this proceeding other than those named in the caption.)

STATEMENT OF THE CASE

Petitioner was charged in an information, alleging willful failure to file federal income tax returns for the taxable years 1975, 1976, and 1977, in violation of 26 U.S.C Sec. 7203. The district court had jurisdiction over the action under 18 U.S.C. Sec. 3231.

The theory of the prosecution was that Burns earned sufficient income during each of the three years to require him to file a tax return, and that being fully aware of this duty, he nonetheless "willfully" failed to file those returns.

Burns' theory, in defense, was that he had joined an organization called "Your Heritage Protection Association" (hereafter "YHPA"), and that he regularly attended meetings once a week since 1975 on Saturday evenings, missing only a few. He learned, through the slide show/commentary which is presented at the meetings that "[b]asically, one has to receive silver coinage of 412-1/2

grain standard silver Troy weight per dollar unit, and you have to receive approximately 759 of these per year in order to have a tax liability." (Direct examination of William C. Burns, Appendix C.)

Mr. Burns had only a 10th grade education, and worked as a laborer for the City of Newport Beach. While not an eloquent witness himself, he did lay a sufficient foundation to introduce into evidence the slide show/commentary that he had seen and heard on numerous occasions, and upon which he had relied on the issue of his intent.

A conference was then held in Chambers, at which the proposed testimony of one Armen B. Condo was discussed. (Appendix D.) Mr. Condo was one of the group's leaders whom Burns had heard narrate the YHPA slide presentation, and the defense wished to have him do the same before the jury, so that the jury could evaluate the mental state of the defendant. The court's only objection to the slide presentation at that time was that, in the court's own experience, "I go to Mass every weekend. If the sermon sounds like it's going to be all right, why, I will listen to it. I can get turned off in the first two minutes and I sit there and wait until the whole day is over and I really don't know what the priest has said. A lot of people go to a lot of meetings and they don't listen . . ." (Appendix D.)

Defense counsel noted that the testimony had shown that the defendant "went almost every week for a period of three years and he listened to the same information every week and he relied upon that information." The court then

decided that Burns "should, in my view, have testified with greater specificity as to what it was particularly that he relied upon if he's had that drummed into him fifty weeks a year." The court, being reminded that Burns had only reached the 10th grade, and was not able to eloquently convey his experiences, then approached the situation differently, and said: "Let's look at what you are talking about here. I think we all can see the tax laws are complicated and they are sophisticated. There are a lot of subtleties, constitutional interpretations are extremely complicated, and you emphasize the basic simplicity of your client, Mr. Burns, and his education has not passed the tenth grade, and to suggest that he would be able to go in and absorb discussions fully and be able to then act and rely upon those intelligently, even assuming you can get it in, I think is a false assumption . . ." (Appendix D) In other words, in the court's view, the show was either **so** relevant that Burns should have recreated it for the jury from his own memory, or **irrelevant** only because one situated as was Burns, who has seen the show for possibly over 100 times, couldn't reasonably be expected to have absorbed the material presented.

The defense then attempted to present testimony of Mr. Condo, as to the content of the YHPA meetings that induced Burns to act as he did. (Appendix E.) The court heard yet another offer of proof, that counsel intended "to establish the continuity of these meetings that Mr. Burns has been attending for the last five years, and . . . to

establish what was said at those meetings, and Mr. Burns has already testified that he has taken what was said at these meetings and relied upon them in his decision that he was not required to file a tax return under the law." (Appendix E.)

This time, the court thought that the testimony might be "cumulative". The court said "[i]t seems to me it's objectionable under 403." (Appendix E.) It is assumed the court was referring to Rule 403, Federal Rules of Evidence.

Defense counsel again stated that the reason the testimony was offered was because it was what Mr. Burns actually heard, and that the YHPA official was far more adept at presenting the jury with the reality of what happened than Mr. Burns was. The court then returned to the real basis for his ruling. Despite testimony that Burns had attended almost weekly for the entire 3 year period covered by the information, the court ruled:

> 'Let me go through this for about the fourth time again and see if I can get through to you, because I have told you this several times and you don't seem to accept it. The mere fact that somebody attended a meeting does not compel the conclusion that, one, he stayed there through the meeting throughout the entire period of time, he heard everything that was said, saw everything that was displayed, absorbed everything that was communicated in one form or another, understood everything that took place and relied upon it. I don't see how it's possible to conclude that because one person was present in the same room with another, that that person then knows the state of mind of the other, and on that basis

the objection is sustained." (Appendix E.)

The testimony of Mr. Condo was then cut off every time counsel attempted to find out from him what was taught at the YHPA meetings that Burns had attended, for the above reason. Condo's testimony was not offered to show what happened **inside** Mr. Burn's mind, but to show the **external** stimulus upon his thinking. This could not have been made more clear to the court.

The defense then requested that the jury be instructed that the defendant's conduct was not "willful" within the meaning of the statute if it was caused by "reckless disregard for the requirements of the law . . ." or due to "gross negligence." (Appendix F) Those portions of the willfulness instructions were refused, and the court instructed the jury as set forth in Appendix G.

The court also instructed the jury that it was to take into account with respect to each witness, the "apparent intelligence, motive and state of mind and demeanor and manner while on the stand," and the witness' "ability to observe matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters." (Appendix G) Further, the court instructed the jury that it should [c]consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and **the extent to which, if at all, each witness is either supported or contradicted by other evi-**

dence in the case." (Appendix G) (emphasis added) This instruction was given despite the court's refusal to allow Burns to corroborate his contentions that certain matters were taught him at the YHPA meetings.

During its deliberations, the jury returned with a question: "Judge Waters, does outside influence have a bearing on the definition of voluntarily and intentionally in this specific case?" (Appendix H) The court did not answer the question, but referred the jury back to the set of written instructions that had been sent into the jury room.

The jury found Burns guilty on all three counts. Burns made a motion for a new trial, based upon the court's refusal to let him put on his defense. This time, the court expressed its opinion of the evidense in such a fashion as would clearly suggest that Burns had a right to present it:

> "What you have here, Mr. Barrett, is an individual who has been victimized by Mr. Condo and this organization, Your Heritage Protection Association.
>
> "As a lawyer you just have to know that this question has been tested time and time again, that Mr. Condo indeed is effecting and perpetrating a fraud on these poor people.
>
> "And I was not going to permit Mr. Condo to continue to voice that throughout this court . . ." (Appendix I)

The court then sentenced Mr. Burns, the "victim", to one year in a penitentiary, five years' probation, and a $2,000 fine.

Burns appealed to the Court of Appeals for the Ninth Circuit, which affirmed his conviction. The unpublished

opinion is reproduced at Appendix A. New counsel was substituted in, and filed a petition for rehearing. That, too, was denied, and the denial is reproduced at Appendix B. This petition for writ of certiorari ensued.

REASONS FOR GRANTING THE WRIT

1. The opinion of Court of Appeals, holding that Burns was not entitled to present the program upon which he relied, seriously misapprehends the defendant's rights under the Fifth and Sixth Amendments to present his defense, has permitted a prejudicial departure from the discretion granted the trial court under Rule 403, Federal Rules of Evidence, and the basis for the decision is not supported by the trial record.

The defendant was charged, not with failure to file tax returns, but with "willful" failure to file those returns. His entire defense rested upon the instruction he had received from YHPA. That he had attended the YHPA slide show/commentary almost every Saturday night for a number of years emphasizes even more the need, and right, to have YHPA play an active role in his defense.

This Court has held, in **Washington v. Texas,** 388 U.S. 14 (1967):

> "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has

the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." **Washington,** at p. 19.

And further:

"We hold that the petitioner in this case was denied his right to have compulsory process for obtaining witnesses in his favor because the State arbitrarily denied him the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense. The Framers of the Constitution did not intend to commit the futile act of giving to the defendant the right to secure the attendance of witnesses whose testimony he had no right to use. The judgment of conviction must be reserved." **Washington,** at p.23.

(See also, **Chambers v. Mississippi,** 410 U.S 284, (1973), **In re Oliver,** 333 U.S. 257 (1948))

Admittedly, Burns was not the victim of a specific evidentiary rule that actually **prohibited** the testimony of his witness, as was the defendant in **Washington.** But the principle is the same. It is both a Fifth Amendment Due Process right to a fair trial, which involves the right to present the defendant's version of the facts, and a Sixth Amendment right to present witnesses in the defendant's favor. To the extent that Rule 403, which permits the court

to exercise some discretion over the admission of relevant evidence, interferes with the Fifth and Sixth Amendment rights to present an effective defense, the trial court has overstepped the boundaries of its discretion.

That is claimed to have happened here, to the extent that Rule 403 is even relevant to a resolution of the problem.

The recored does not fully support the contention that the trial court excluded the evidence because of Rule 403. As stated above, the court noted that its ruling was based on his belief that "[t]he mere fact that somebody attended a meeting does not compel the conclusion that, one, he stayed there through the meeting throughout the entire period of time, he heard everything that was said, saw everything that was displayed, absorbed everything that was communicated in one form or another, understood everything that took place and relied on it." The court specifically stated: "on that basis the objection is sustained." (Appendix E) Therefore, the court of appeals engaged in, and sanctioned, a damaging departure from the normal judicial procedure when it affirmed the trial court's exclusion of this evidence based upon Rule 403.

Further, it would seem that the trial court himself recognized, in some fashion, the importance of the Condo testimony when he noted that Burns was "an individual who had been victimized by Mr. Condo and this organization, Your Heritage Protection Association," and "Mr. Condo indeed is affecting and perpetrating a fraud on

these poor people." (Appendix I) The court gave as his reason for excluding evidence of the YHPA program: "... I was not going to permit Mr. Condo to continue to voice that thought in this court." (Appendix I) One asks, if Mr. Burns was the "victim" of a fraud, ought he not to have been allowed to **show** the jury how he was victimized?

The prejudicial impact of this set of events is heightened when one takes into account the fact that the court instructed the jury that it should "[c]onsider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and **the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.**" (Appendix G) (emphasis added) That was a proper instruction. The problem was that Mr. Burns never got to show the jury that his testimony was supported by other evidence in the case, which is particularly significant given the court's warning to consider the witness' interest in the outcome of the case.

In addition, the jury itself asked the court what impact "outside influence" had on the definition of intent in the case. The court did not provide a meaningful answer. (Appendix H) Had the jury ben presented with the excluded evidence, it would have been in a better position to consider the problem properly, since it was obviously concerned.

On this record, it is clear that Mr. Burns' Fifth and Sixth Amendment rights to present his defense were prejudici-

ally violated. It simply cannot be said that any error was harmless, and certainly not beyond a reasonable doubt. **Chapman v. California,** 386 U.S. 18 (1966).

For the foregoing reasons, the judgment of the court of appeals should be reversed.

2. The opinion of the court of appeals states that "[t]he trial court properly instructed the jury on the requirement of willfulness." (Appendix A) The trial court had refused to instruct the jury that the defendant's conduct is not "willful" if the failure to file tax returns is due to a "reckless disregard for the requirements of the law," or if it was due to "gross negligence." (Appendix F) The court of appeals, in so holding, has affirmed a principle which is not in conformity with the law as it has already been decided by this Court.

In an early landmark case, **United States v. Murdock,** 290 U.S. 389 (1933), this Court held that a criminal tax statute requiring "willfulness" is not violated if the defendant has a bonafide misunderstanding as to his duties under the tax laws.

In **United States v. Bishop,** 412 U.S. 346 (1973), the Court held that a tax misdemeanor does not require a lesser showing than for a felony. Specifically, the Court noted, in that case, that a particular misdemeanor was not a lesser included offense within a particular felony, and the defendant was not entitled to have the jury instructed that he was guilty of the lesser offense if his behavior was based

on caprice or careless disregard for the law. In other words, caprice or careless disregard for the law do not amount to "willfulness" under the misdemeanor statute. Reconsidering the **Bishop** case in **United States v. Pomponio,** 429 U.S. 10 (1976), this Court reaffirmed the principle that "[willfulness] requires more than a showing of careless disregard for the truth." **Pomponio,** at p.12. See also, footnote 3, **Pomponio,** at p.12.

Here, the jury was instructed as set forth in Appendix G, which does not adequately incorporate the above principles which this Court has passed upon. Further, the defendant's requested instruction is standard for these cases, evidenced by its inclusion in the widely-used **Federal Jury Practice and Instruction,** by Devitt & Blackmar. Sec. 35.31, relating to "willful failure to file," specifically includes those portions requested by the defendant. That instruction has been used and approved in cases too numerous to mention.

The court's failure to properly instruct the jury, and the court of appeals' finding that the jury was properly instructed, amount to a denial of justice which ought to be reviewed, and reversed, by this Court.

3. One additional ground was set forth upon which the petitioner prays that certiorari be granted, and that is evidenced best by the nature of the YHPA program upon which he relied. Burns' defense was that he believed he did not earn any taxable income because he didn't get "real" dollars. All he received were federal reserve notes.

At first glance, this will appear to be only one of many routine, petty criminal tax cases, ill-suited for consideration by this Court because there is an abundance of appellate cases involving similar questions supporting a denial of certiorari. But William Chapin Burns is a Tax Rebel. He emanates from a protest group in California 17,000 strong and growing every day. We are informed by "protest" periodicals that there are now twenty million members across the land - so-called "citizen patriots" - all believing that their wages paid in federal reserve notes are not taxable under the Sixteenth Amendment, that there is no duty to file returns or pay tax, and that the Sixteenth Amedment, if it seeks to tax the fruits of labor, is unconstitutional. The leaders rely upon ancient decisions of this Court to support their beliefs and cast disrepute on adverse appellate decisions. Credibility, supported in large part by the improbability of prosecution, feeds the movement and calls thousands more into the fold. The time has come to review the principles of the protest movement, the admixture of policies of the U.S. Treasury Dept. aimed at quelling the storm, and the futility of prosecution of the numbers involved. The government will confirm the administrative importance of the questions presented.

This Court has never provided a **direct** statement as to the merits of "protester" contentions. This case however, squarely presents the issue, because if Mr. Burns was right on the "money" issue, then he ought to have been

acquitted. It is because of the enormous administrative importance of this problem that certiorari is prayed for on this point.

We consider this and several related cases still within the appellate stage, but likely to be presented to this Court on petition for certiorari, to offer the Court sufficient factual background to review all questions presented in the typical "tax protester" conviction. Accordingly, we pray that the petition be granted.

CONCLUSION

This case presents the Court with a variety of significant issues commonly occurring in the "tax protester" case. For the reasons stated above, it is prayed that this Court will grant the petition for writ of certiorari and will reverse the judgment of the Court of Appeals for the Ninth Circuit.

DATED: February 21, 1981

Respectfully submitted,

CLYDE R. MAXWELL
Counsel for Petitioner
and Member of the Bar
of the United States
Supreme Court

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DEC 1 1980
RICHARD H. DEANE
CLERK US COURT OF APPEALS

UNITED STATES OF AMERICA,	
Plaintiff-Appellee,	DC No. 79-708-LEW
vs.	Nos. 80-1055 and 80-1056
WILLIAM CHAPIN BURNS,	MEMORANDUM
Defendant-Appellant.	

Appeal from United States District Court
for the Central District of California
Laughlin E. Waters, District Judge, Presiding.
Argued and Submitted June 30, 1980

Before: SKOPIL and FERGUSON, Circuit Judges, and EAST,* District Judge.

INTRODUCTION

Burns was convicted on three counts of willful failure to file a federal income tax return in violation of 26 U.S.C. 7203. Burns argues on appeal that the trial court erred in excluding

* The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

the material he offered concerning the program or seminar on which he allegedly based his beliefs about the tax laws. We affirm.

DISCUSSION

The trial court properly instructed the jury on the requirement of willfulness and permitted Burns to present his good faith defense. Burns was allowed to testify as to his attendance at the seminar and as to the conclusion he had reached as a result of the presentation. Testimony of a third person to whom he had stated his beliefs was also admitted.

The content of the statements made at the seminars about what is "real" money and when one has a tax liability were the information on which Burns allegedly relied. They were admitted into evidence. Burns was not entitled to recreate for the jury the means by which that information was conveyed to him. Such presentation was not necessary to preserve Burns' right to present his defense.

While the information on which Burns relied was relevant to his mental state, the trial court properly excluded reenactment of the whole seminar as needlessly cumulative and likely to confuse the jury. FedR.Evid, 403; **Cooley v. United States,** 501 F.2d 1249, 1253-54 (9th Cir. 1974), **cert denied,** 419 U.S. 1123 (1975).

The judgment of conviction is AFFIRMED.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 22 1981
RICHARD H. DEANE
CLERK U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Appellee,	D.C. No. 79-708-LEW
v.	Nos. 80-1055 80-1056
WILLIAM CHAPIN BURNS, Appellant.	ORDER

Appeal from United States District Court
for the Central District of California
Laughlin E. Waters, District Judge, Presiding

Before SKOPIL and FERGUSON, Circuit Judges, and
EAST,* District Judge

The panel has voted to deny the petition for rehearing. The petition for rehearing is denied.

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*The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE LAUGHLIN E. WATTERS,
JUDGE PRESIDING

— — —

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR 79-708-LEW
	)	
WILLIAM C. BURNS,	))	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DATE: WEDNESDAY, OCT. 24, 1979
PAGES: 229-287 (excerpts)

DIRECT EXAMINATION OF
WILLIAM C. BURNS

* * *

Q. Are you familiar with a group called Your Heritage Protection Association?

A. Yes.

Q. How long have you been familiar with that group?

A. Since 1975.

Q. Would you please explain to the jury the circumstances of your becoming associated with that group?

A. I am a personal friend of Armen Condo.

Q. And who is he, sir?

A. He is the founder of the group.

Q. By the way, are you a member of the group?

A. Yes, sir. I am No. 41 of the membership.

Q. And you have been a member since when, sir?

A. 1975.

Q. Does the group hold public meetings?

A. Yes.

Q. How often?

A. Three times a week.

Q. Do you attend any of these public metings?

A. Usually on a Saturday evening.

Q. Have you had occasion to miss any of these meetings?

A. A few times.

Q. What type of things do they talk about at these meetings?

A. They explain —

MR. BONNER: Objection. It calls for a narrative answer. Perhaps in this area we could have a question and answer.

THE COURT: Sustained.

BY MR. BARRETT:

Q. Do they ever talk about money at these metings, sir?

A. Yes.

Q. And who does the talking about money?

A. Either Armen Condo or Irish Conway.

Q. How about guest speakers? Do they ever have any of those?

A. Oh, yes.

Q. And do they talk about money as it pertains to income, filing income tax returns?

A. Yes.

Q. What do they say about money as it relates to the necessity of filing an income tax return?

A. Basically, one has to receive silver coinage of 412-1/2 grain standard silver Troy weight per dollar unit, and you have to receive approximately 750 of these per year in order to have a tax liability.

Q, Did you file an income tax return in the years '75, '76, and '77?

A. No.

Q. Why not?

A. Because I did not receive my income, the dollars.

* * *

THE CLERK: Plaintiff's Ehibit 6 is now before the witness.

BY MR. BARRETT:

Q Do you recognize those?

A. I recognize them, yes.

Q. What are they?

A. They are my cancelled payroll checks.

Q. Are they made out to you?

A. Yes, they are.

Q. And what are they made payable in?

A. It says on the face of it dollars.

Q. Is that what you have contracted to work for?

A. Yes, it is.

Q. And what have you received when you cashed them?

A. Federal Reserve Notes.

Q. And there has been some testimony with reference to stamps on the back of these. Do you recognize the stamp?

A. Yes.

Q. What is the stamp?

A. It's an endorsement stamp.

Q. And who put it there?

A. I did.

Q. For what purpose?

A. To show that I have not received lawful money, gold and silver.

Q. What does the stamp state?

A. It says: "In accepting and endorsing this check, the endorser," then it's my signature, "in no way acknowledges having received lawful money." Then below that it says' "There is no real money with 412-1/2 grain standard silver Troy weight in circulation or 25.8 grain standard

gold in circulation. Bank drafts or checkbook money in lieu of Federal Reserve notes or Federal Reserve notes are therefore not redeemable in specie." The below that it says: "U.S. Coinage Acts 1792 through 1900, Article 1, Section 8 and Section 10 of the U.S. Constitution." Then it quotes Amendments 1, 4, 5, 7, 9 10, 13 of the United States Constitution, and it's got a case here, Ward versus Smith, 7 Wall., 447-453, March 29, 1869.

Q. Why don't you tell the jury whether or not you honestly believe those statements on that stamp.

A. Yes, I do.

* * *

Q. Between the years 1965 — that's when you joined YHPA?

A. '75.

Q. Sorry. Between the years 1975 and I guess it would be April of 1978, what types of things did you read that related to this particular thing about the value of dollars and your understanding?

A. The Coinage Acts, the Constitution of the United States — that Congress has the power to coin money and lay the value thereof, which is done in the original Coinage Act of 1792.

* * *

Q. With reference to these YHPA meetings that you have attended, have you heard things that they have said?

A. Oh, yes.

Q. Between the years of '75 and April of '78, did the

things that they say substantially change in any way?

A. No. They have been basically the same.

Q. How about today? Do they still say the same things at these public meetings as they did during that period of time?

A. Yes.

Q. And do you beleive that?

A. Yes, I believe that.

Q. Do you rely upon it?

A. Yes.

Q. And do you use that as the basis or have you used that at least in part as the basis for your determination that you aren't required to file a tax return?

A. Yes.

* * *

A. Would you please explain to the jury, describe to the jury what types of things you have occasion to look at during these meetings.

A. IRS Documents, Federal Reserve notes, coinage books.

Q. What types of IRS documents?

A. Indicating who should file, who shouldn't.

Q. What types of books?

A. Various manuals and publications.

Q. Anything else that you can presently recall?

A. Slides of various documents showing also various types of notes.

Q. When was the last time you attended a YHPA meeting?

A. Last weekend.

Q. What, if anything, was different between that meeting and the metring that you attended between the years of '75 and April of '78?

MR. BONNER: Object on relevancy grounds, your Honor.

THE COURT: Sustained.

BY MR. BARRET:

Q. Between '75 and the present time, have these meetings changed in any way?

A. No. They are basically the same.

MR. BARRETT: I have nothing further.

* * *

REDIRECT EXAMINATION OF
WILLIAM C. BURNS

* * *

Q. How come you never saw an accountant or a lawyer or somebody with reference to this question?

A. Because I relied on Armen Condo and others for information needed.

Q. Who are those others?

A. Irish Conway, Claire Kelley, John Kelley, Armen Mott, and there are probably others.

Q. Who is Irish Conway?

A. He's co-founder of Your Heritage Protection Association.

Q. And how about the two Kelley people that you mentioned?

A. John Kelley is a member of Your Heritage Protection Association.

Q. And is Claire Kelley?

A. Yes.

Q. And who is the other person?

A. Armen Mott. He's the treasurer of United States Taxpayers Union.

Q. And what did Armen Condo tell you that you relied upon?

A. The fact that we don't owe any income tax.

Q. For what reason?

A. Because we have not received silver and gold coinage or certificates backed by silver or gold.

Q. How about the other people? Did they tell you the same thing or anything different?

A. Basically the same.

Q. I want you to look the jury in the eye and tell them whether or not you believe that.

A. I believe it.

* * *

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE LAUGHLIN E. WATERS,
JUDGE PRESIDING

— — —

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR 79-708-LEW
	)	
WILLIAM C. BURNS,	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DATE: THURSDAY, OCT. 25, 1981
PAGES: 336-340 (excerpts)

CONFERENCE IN CHAMBERS

* * *

MR. BARRETT: All right. Perhaps we ought to discover another evidentiary matter and perhaps we won't be using opinions in this particular case, but he definitely

stated that he relied upon the information he was given. Forget Court opinions for the moment. He definitely stated that he relied upon information that he obtained between the years '75 and April of '78 at these meetings, and I propose to put into evidence today what he was told at these meetings.

THE COURT: That won't wash, Mr. Barrett. I go to mass every wekend. If the sermon sounds like it's going to be all right, why, I will listen to it. I can get turned off in the first two minutes and I sit there and wait until the whole day is over and I really don't know what the priest has said. A lot of people go to a lot of meetings and they don't listen, and there is just no way that you are going to persuade me that it's proper to infer that because he attended meetings every week — first of all, he has been very general as to meetings that he attended. he attended regularly and he attended on a weekly basis, but he has at no time testified that on weekend meetings, for example, we discussed noting but Supreme Court opinions and he — there is testimony that the meetings took place three times a week and —

MR. BONNER: He went to Saturday meetings only, he said.

THE COURT: Yes.

MR. BARRETT: He went to Saturday meetings.

THE COURT: Only.

MR. BONNER: He lists some of them.

MR. BARRETT: The testimony is very clear that

during this period of time, almost every Saturday he went to these Saturday meetings, that he'd listen to the information that was given, and that he relied upon the information that was given in forming his opinion that he was not required to file a return.

THE COURT: All right. You make your record on that, but I just — I don't think that it is in any way proper to ask a jury to infer that over a period of three years, an individual attended meetings with three or four sessions and that he absorbed everything that was said and relied upon it.

MR. BARRETT: I am not asking the jury to infer it. There is direct testimony to that point.

THE COURT: Testimony to what pojnt?

MR. BARRETT: That he went almost every week over a period of three years and he listened to the same information every week and he relied upon that information.

THE COURT: Well, then, he should, in my view, have testified with greater specificity as to what it was particularly that he relied upon, if he's had that drummed into him fifty weeks a year.

MR. BARRETT: Unfortunately, we are dealing here with a person with a ninth grade education who is not a public speaker.

MR. BONNER: Wasn't it tenth grade education?

MR. BARRETT: Ninth or tenth. What's the difference?

MR. BONNER: A year.

MR. BARRETT: That's true. That's good mathematics. He's not a public speaker. He's sitting there on the witness stand under the gun. He doesn't have the ability to convey to the jury from memory everything that was said to him, and I submit, your Honor, if I am not allowed to connect up the testimony — he says he relied upon the advice he was given. If I can't show the jury what that advice was, he's being deprived of his defense, your Honor.

THE COURT: I understand your position, and I am telling you what I think the law is and how it's applicable. I just don't think that it's in any way appropriate. We verged on that yesterday when you attempted to get Mr. Sentesy to testify as to what he was told by another party who had conversations with Mr. Burns. At the very least, this would be double and maybe triple hearsay, and there is just no way you can get that sort of testimony, as I understand the law of evidence.

MR. BARRETT: That was different.

THE COURT: This is not that much different, because I take it that you propose to put another witness on for the purpose of testifying what was covered at these meetings.

MR. BARRETT: Yes. If I testify that I relied upon Judge Waters' advice in terms of doing such and such a thing or not doing such and such a thing, then it's totally appropriate when we are dealing with the question of willfulness for Judge Waters to testify what he told me.

MR. BONNER: No, absolutely not. You have to say I relied upon Judge Waters advice given me at a certain time, material to this effect, period.

MR. BARRETT: Well, I wasn't trying to lay a foundation in my example.

MR. BONNER: That's the point here.

THE COURT: Let's look at what you are talking about here. I think we all can see the tax laws are complicated and they are sophisticated. There are a lot of subtleties, constitutional interpretations are extremely complicated, and you emphasize the basic simplicity of your client, Mr. Burns, and his education has not passed the tenth grade, and to suggest that he would be able to go in and absorb discussions fully and be able to then act and rely upon those intelligently, even assuming you can get it in, I think is just a false assumption. But in any event, you call your witness and —

MR. BARRETT: Make my record.

THE COURT: Put him on, sure.

* * *

APPENDIX "E"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE LAUGHLIN E. WATERS,
JUDGE PRESIDING

— — —

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR 79-708-LEW
	)	
WILLIAM C. BURNS,	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DATE: THURSDAY, OCT. 25, 1979
PAGES: 379-398 (excerpts)

DIRECT EXAMINATION OF ARMEN B. CONDO

* * *

BY MR. BARRETT:

Q. Where do you live, Mr. Condo?

A. Huntington Beach.

Q. What is your present occupation?

A. Tax consultant and executive director of Your Heritage Protection Association.

* * *

Q. Mr. Condo, I believe you testified that you are the founder of Your Heritage Protection Association.

A. Yes, I am.

Q. When did you found that?

A. March 1, 1975.

Q. And why did you found it?

A. I became aware of many things that were wrong in government.

MR. BONNER: Objection as to why he founded YHPA, your Honor.

THE COURT: Sustained.

BY MR. BARRETT:

A. What is the purpose of YHPA?

MR. BONNER: Same objection, your Honor.

THE COURT: Sustained.

BY MR. BARRETT:

Q. Does YHPA conduct weekly meetings?

A. Yes, sir, it does.

Q. And how long has YHPA conducted weekly meetings?

A. Since March 25, 1975.

Q. And do you know Mr. Burns?

A. Yes, I do.

Q. And how long have you known Mr. Burns, sir?

A. I met Mr. Burns in church about 1970.

Q. Excuse me. I didn't hear that.

A. I met Mr. Burns in a church that we both belong to in 1969 and '70.

Q. And did you have a social relationship with him between, say, '69 and '70 and 1975?

A. Yes, we did.

Q. And with reference to YHPA, have you known Mr. Burns?

A. Yes, we have.

Q. And with reference to YHPA, have you known Mr. Burns?

Q. Yes, we have.

Q. How have you so known Mr. Burns?

MR. BONNER: Objection. The question calls for a narrative answer and it's vague.

THE COURT: No. Overruled. You may answer that.

THE WITNESS: As I founded YHPA, I informed all of my friends and neighbors, relatives, business associates of what I—

THE COURT: No. The question was, Mr. Condo, how did you know Mr. Burns through YHPA. That's all.

THE WITNESS: He became a member of YHPA.

BY MR. BARRETT:

Q. When did he become a member?

A. Just very shortly after I founded the association.

Q. So that would have been shortly after March of 1975?

A. Probably in late April or early May of 1975.

Q. And how many members are in YHPA?

MR. BONNER: Objection, your Honor.

THE COURT: Sustained.

BY MR. BARRETT:

Q. You mentioned that you are — I think you said a tax counselor.

A. Yes, I am.

Q. A lecturer?

A. Yes.

Q. Does YHPA conduct regular meetings?

A. Yes.

MR. BONNER: Asked and answered, your Honor.

THE COURT: Susteained.

BY MR. BARRETT:

Q. With reference to the regular meetings that are conducted on Saturday, have you seen Mr. Burns at these meetings?

A. Yes. Every Saturday.

Q. Over how longh a period of time?

A. During the entire five year period.

Q. That would include between the years of 1975 and April of 1978?

A. Yes.

Q. And has the content oif those meetings varied?

A. Very slightly. Almost the same continually all the way through.

Q. In which way has it varied?

MR. BONNER: Object as to its content and the varience.

THE COURT: Sustained.

MR. BARRETT: That goes into foundation, your Honor. I am trying to lay a foundation for continued testimony.

MR. BONNER: If I may be heard, your Honor. It appears the foundation is for inadmissable evidence.

MR. BARRETT: Well, that's a guess.

THE COURT: It may be, but what is your offer of proof on this?

MR. BARRETT: My offer of proof is that I intend to establish the continuity of these meetings that Mr. Burns has been attending for the last five years, and I intend to establish what was said at those meetings, and Mr. Burns has already testified that he has taken what was said at these meetings and relied upon them in his decision that he was not required to file a tax return under the law.

THE COURT: Then this testimony is cumulative. Mr. Burns has testified that he attended — not as regularly as Mr. Condo says, but that he did attend the meetings and that he heard certain things and that he relied upon them. This is cumulative. It seems to me it's objectionable under 403.

MR. BARRETT: It's not cumulative in the sense, your Honor, that Mr. Condo giving these weekly meetings is more adept at presenting exactly what was said to Mr. Burns than Mr. Burns' recollection.

THE COURT: The we get back to the proposition again, Mr. Barrett, that we have discussed. We can attend a lot of meetings, and we can either hear or not hear and whether everything that was said or presented was absorbed and understood and relied upon by Mr. Burns certainly cannot be known to Mr. Condo or anybody else. He can say that he saw him present. The objection is sustained.

MR. BARRETT: Well, your Honor, Mr. Burns stated that he relied upon what somebody else told him, then somebody else confirming or otherwise stating what that thing that he told him was is circumstantial to his state of mind and is admissable.

THE COURT: Let me go through this for about the fourth time again and see if I can get through to you, because I have told you this several times and you don't seem to accept it. The mere fact that somebody has attended a meeting does not compel the conclusion that, one, he stayed there through the meeting throughout the entire period of time, he heard everything that was said, saw everything that was displayed, absorbed everything that was communicated in one form or another, understood everything that took place and relied upon it. I don't see how it's possible to conclude that because one person was present in the same room with another, that that other person then knows the state of mind of the other, and on that basis the objection is sustained.

BY MR. BARRETT:

Q. Mr. Condo, have you ever personally consulted with

Mr. Burns with reference to his requirement to file a tax return.

A. Yes.

Q. '75, '76 and '77?

A. All three years, yes, I have.

Q. And did he come to you in 1975 and tell you that based upon your advice, he had not filed a tax return?

MR. BONNER: Objection. leading, your Honor.

THE COURT: Sustained.

BY MR. BARRETT:

Q. Did he discuss with you in 1975 whether or not he had filed a tax return?

A. Yes, he did.

Q. And what did he tell you?

A. That he had not filed.

Q. And did he tell you on what he made that determination?

A. I'm the one that advised him not to file because he had no requirement to file a tax return.

Q. How about 1976?

A. Same thing.

Q. How about 1977?

A. Same thing.

Q. What was it you told him —

MR. BONNER: Objection.

BY MR. BARRETT:

Q. —when you told him that he had no requirement to file?

THE COURT: Sustained.

BY MR. BARRETT:

Q. Prior to advising Mr. Burns that he had no requirement to file, did you do any research or study in this area?

A. Yes, I did.

Q. And what did you do, sir?

MR. BONNER: Objection again. He's not been allowed to testify as to what he said, so the basis upon what he said is not in evidence. It shouldn't be allowed in.

THE COURT: Sustained.

MR. BARRETT: On the contrary, your Honor. He was allowed to testify to the fact that he advised Mr. Burns not to file, that he wasn't required to, so counsel's objection is based upon a false premise.

THE COURT: The mere fact that counsel permitted some testimony to come in which was objectionable doesn't mean that the door is forever open, Mr. Barrett. An objection has been asserted now. Had it been asserted earlier, I would have sustained the objection then, and I have sustained it now.

MR. BARRETT: But I'm stating, your Honor, that the objection was based upon a false premise.

THE COURT: I sustained the objection. Put your next question.

BY MR. BARRETT:

Q. Since founding YHPA, have you advised other persons—

A. Yes, sir.

Q. —that they are not required to file income tax returns?

MR. BONNER: Objection, your Honor.

THE COURT: Sustained.

BY MR. BARRETT:

Q. Did you ever so advise Mr. Burns as a lecturer during public meetings that you stated that Mr. Burns attended from '75 to '77?

MR. BONNER: Again, objection, your Honor.

THE COURT: Sustained.

BY MR. BARRETT:

Q. When you advised Mr. Burns he was not required to file a tax return—

MR. BONNER: Objection, your Honor. I beg your pardon. I withdraw that.

Q. Did you tell him why?

MR. BONNER: Objection.

THE WITNESS: Yes.

MR BONNER: Objection. Motion to strike.

THE COURT: Sustained. That last answer may go out.

MR. BARRETT: Excuse me. May I have a moment to confer with co-counsel?

THE COURT: Yes.

(Mr. Barrett and Mr. Channell confer.)

BY MR. BARRETT:

Q. Pursuant to the advise that you gave Mr. Burns, did you personally — did you inform him whether you personally had filed income tax returns?

A. Yes.

MR. BONNER: Again, objection, your Honor. Motion to strike.

THE COURT: Sustained. The answer may go out. Mr. Condo, you are very quick with your answers. I require counsel in this courtroom to stand when they make an objection. If you see Mr. Bonner stand, please give him an opportunity to make his objection so that I can rule on it before you answer the question. Do you understand that?

THE WITNESS: Yes, your Honor.

BY MR. BARRETT:

Q. Mr. Condo, between the years 1975 to the present, have you ever challenged the IRS to take you to court for—

MR. BONNER: Objection.

THE COURT: Sustained.

MR. BARRETT: The question hasn't been asked yet.

THE COURT: That's ridiculous. It's very clear from your prefatory remarks that the substance of your proposed question will be totally irrelevant and immaterial.

BY MR. BARRETT:

Q. With reference to the advice that you gave Mr. Burns as your testified to, did you ever file any papers with the IRS in that regard?

A. Yes.

MR. BONNER: Objection. Motion to strike.

THE COURT: Sustained. Motion to strike is granted. The jury is instructed to disregard these answers that I am striking from the record.

* * *

MR. BARRETT: May the witness be shown Exhibits N-)1 through N-34?

THE CLERK: Defendant's Exhibits N-1 through N-34 before the witness.

BY MR. BARRETT:

Q. Do you have N-1 through N-34 in front of you, Mr. Condo?

A. Yes, I do.

Q. Would you please describe what N-1 through N-34 are?

A. These are visual slides.

THE COURT: Just a moment. Don't go into the contents of what is contained here, Mr. Condo, on any page in this exhibit.

THE WITNESS: Okay.

THE COURT: Merely describe the format that you have here.

THE WITNESS: Yes, your Honor.

BY MR. BARRETT:

A. What is N-1 through N-34?

A. They are visual aid slides that we use to show the

audience what we are talking about.

MR. BONNER: Objection, your Honor. Visual aid slides sufficiently identifies them.

THE COURT: Yes, I think the answer is complete.

BY MR. BARRETT:

Q. Where do you use these visual aid slides?

A. At our weekly meetings.

Q. Have you ever shown them to Mr. Burns?

A. Yes, I have.

MR. BONNER: Objection. Motion to strike.

THE COURT: Motion to strike granted. Objection sustained.

BY MR. BARRETT:

Q. What is the purpose of these visual slides?

MR. BONNER: Objection.

THE COURT: Sustained.

BY MR. BARRETT:

Q. How are they used?

MR. BONNER: The question is ambiguous I'd object to it on that ground.

THE COURT. Sustained.

BY MR. BARRETT:

Q. I believe you testified that these slide are shown at your meetings.

MR. BONNER: Objection, your Honor.

THE COURT: Yes. The objection is sustained on that, too, Mr. Barrett.

BY MR. BARRETT:

Q. From 1975 to the present, have you changed these slides in any way?

A. Updated a few of them with new IRS rulings.

Q. With reference to the advice that you gave Mr. Burns, that he wasn't required to file a tax return, did you show him those slides?

MR. BONNER: Objection.

THE COURT: Sustained.

BY MR. BARRETT:

Q. Mr. Condo, have you brought with you a projection machine and a screen?

A. Yes, I did.

Q. Are you prepared to show those to the jury?

A. Yes.

MR. BONNER: Objection. Motion to strike.

MR. BARRETT: No, your Honor. I'm asking him—

THE COURT: Well, of course, Mr. Barrett. This is neither adroit nor subtle. We have discussed these matters. I have told you before that these are not proper evidence, and for you to lay that kind of a foundation is just improper and you know it, and the objection is sustained.

MR. BARRETT: Well, your Honor, again, Mr. Burns has testified that he relied upon this advice.

THE COURT: We have been over that and I have made my ruling, Mr. Barrett. Put your next question.

MR. BARRETT: I have no further querstions.

APPENDIX "F"

DEFENDANT'S JURY INSTRUCTION NO. 5

You are instructed that the specific intent of "willfulness" must be proven in order to convict a defendant of failure to make an income tax return. The term "willfully," used in connection with this offense, means voluntarily, purposefully, deliberately, with evil motives, or with bad purpose. Mere negligence, even gross negligence, is not sufficient to constitute willfullness under the criminal law.

The failure to make a timely return is willful if the defendant's failure to act was voluntary and purposeful, and with the specific intent to fail to do what he knew the law requires to be done.

The defendant's conduct is not willful if you find that he failed to file a return because of negligence, inadvertance, accident or reckless disregard for the requirements of the law, or due to good faith misunderstanding of the requirements of the law.

Devitt & Blackmar, 3d., Section 35.31 (as moidified)
United States v. Bishop, 412 U.S. 346 (1973)
United States v. Murdock, 290 U.S. 389 (1933)

APPENDIX "G"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE LAUGHLIN E. WATERS,
JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR 79-708-LEW
	)	
WILLIAM C. BURNS,	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
PLACE: Los Angeles, California

DATE: THURSDAY, OCT. 25, 1979
PAGES: 443 and 451 (excerpts)

COURTS INSTRUCTIONS TO THE JURY

* * *

Consider each witness' apparent intelligence, motive and state of mind and demeanor and manner while on the

stand. Consider the witness' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which if at all each witness is either supported or contradicted by other evidence in the case.

* * *

The term "willful" as used in connection with this offense means voluntary, purposeful, deliberate, and intentional as distinguished from accidental, negligent, or inadvertent. The defendant's conduct is not willful if he acted through negligence, inadvertence, or mistake, or due to his good faith misunderstanding of the requirements of the law.

A failure to make a timely tax return is willful if the defendant's failure to act was volunatry and purposeful with the specific intent to fail to do what he knew the law required to be done; that is to say, with a purpose to disobey or to disregard the law.

* * *

APPENDIX "H"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE LAUGHLIN E. WATERS,
JUDGE PRESIDING

— — —

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR 79-708-LEW
	)	
WILLIAM C. BURNS,	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DATE: THURSDAY, OCT. 25, 1979
PAGES: 468-470 (excerpts)

JURY INQUIRY

* * *

THE COURT: The jury is present. The defendant is present together with counsel.

Ladies and gentlemen, I have two notes, one of which reads: "We would like to hear the transcript of the testimony of the defendant" and a second one: "Judge Waters, does outside influence have bearing on the definition of voluntarily and intentionally in this specific case?"

Are these your notes?

MR. HOWE: Yes.

THE COURT: And these were prepared by whom? You are the foreman, Mr. Howe?

MR. HOWE: Yes, your Honor.

THE COURT: Very well. If you would sign them after this.

MR. HOWE: I'm sorry.

THE COURT: Now, as to the first question, is there a particular portion of the testimony that was given by Mr. Burns that you would like to focus in on or do you want it read in its entirety?

MR. HOWE: The cross-examination.

THE COURT: Go ahead and speak up or speak to your foreman, either way.

(Members of the jury confer)

MR. HOWE: Beginning with the cross-examination of the defendant, your Honor.

THE COURT: All right. We can do that.

Would you try to find that, please Mrs. Cohen.

Ladies and gentlemen, may I suggest that if in the course of reading this testimony we reach a point where you

feel you have had enough, just indicate and we can perhaps avoid taking additional time, and I don't mean to foreclose you at all here.

Mrs. Cohen, if you will then read the testimony.

(The testimony commencing on page 267, line 1 through page 274, line 18 was read to the jury.)

THE COURT: All right. Time on that one. The second question put: "Does 'outside influence' have bearing on the definition of voluntarily and intentionally in this specific case?

In the past when I received inquiries from juries of this type, I would go back and address myself to those instructions which appeared to bear on this area. I have adopted, however, as you have noticed, the practice of sending the instructions into the jury room on the theory that you wouldn't perhaps remember all of them at the time that I read them and that it might be more convenient for you, so I am going to suggest that you go back and keep your question in mind and take a look at those instructions and reach your decision. You have to make, of course, your own findings as to the facts which you find to exist in this case and then apply those as against the instructions of the law, so I am going to refer you back to the instructions that I sent into the jury room in that regard.

Anything further from counsel?

MR. BONNER: Nothing further, your Honor.

THE COURT: Very well. Then, ladies and gentlemen, you will retire. Thank you.

We stand in recess.

THE CLERK: Court stands in recess.

APPENDIX "I"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE LAUGHLIN E. WATERS,
JUDGE PRESIDING

— — —

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
vs.	)	CR 79-708-LEW
	)	
WILLIAM C. BURNS	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DATE: FRIDAY, NOV. 19, 1979
PAGES: 492-493 (excerpts)

MOTION FOR NEW TRIAL

* * *

THE COURT: What you have here, Mr. Barrett, is an individual who has been victimized by Mr. Condo and this

organization, Your Heritage Protection Association.

As a lawyer you just have to know that this question has been tested time and time again, that Mr. Condo indeed is effecting and perpetrating a fraud of these poor people.

And I was not going to permit Mr. Condo to continue to voice that thought in this court. Your contention, in my view, was about as unsound legally as it could possible be. I think it is unsound now, it was a waste of time for you to file this motion, as indeed I think it was a waste of time to assert the defense that was made with regard to Mr. Burns.

A defendant is entitled to a vigorous defense and is entitled to require the government to put forward evidence of sufficient degree to sustain its burden. But to have such a phony defense asserted here, particularly in light of cases that have gone on, it just amazes me that reputable counsel would participate in it.

The motion is denied, Mr. Barrett.

MR. BARRETT: Your Honor, may I be heard just on one —

THE COURT: No, I have denied the motion. There is nothing in front of me now.

MR. BARRETT: Yes, your Honor.

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 N. Bush Street, Santa Ana, California 92701.

On February 21, 1981, I served the within Petition for Writ of Certiorari on the interested parties in said action, by placing a true copy in each of two envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

WADE McCREE
Solicitor General
Department of Justice
Washington, D.C. 20530

ANDREA S. ORDIN
U.S. Attorney
c/o Mark Bonner
Asst. U.S. Attorney
312 N. Spring St.
Los Angeles, CA 90012

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on February 21, 1981, at Santa Ana, California.

Jack Gallagher